Editor's note: Reconsideration denied by Order dated Dec. 6, 1988.

CAROLYN L. SHOGRIN

IBLA 86-1400 Decided November 4, 1988

Appeal from a decision of the Eastern States Office, Bureau of Land Management, holding that oil and gas lease ES 21637 terminated by operation of law.

Reversed and remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Termination

When BLM issues a noncompetitive lease upon an over-the-counter offer, BLM is required to mail a copy of the executed lease to the offeror. A decision that an oil and gas lease has terminated by operation of law for failure to pay timely the annual rental on the first anniversary date will be reversed if BLM did not mail or deliver the lease to the offeror's last address of record.

APPEARANCES: Carolyn L. Shogrin, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Carolyn L. Shogrin has appealed from notice dated May 2, 1986, from the Eastern States Office, Bureau of Land Management (BLM), informing her that oil and gas lease ES 21637 had terminated for failure to pay the annual rental due on the first anniversary date of the lease, July 1, 1984. Appellant's over-the-counter application for a noncompetitive acquired lands lease was filed on June 21, 1979. Appellant's offer was signed by BLM's Authorized Officer on June 14, 1983, and the lease was given an effective date of July 1, 1983. No rental payments had been received on the first or subsequent anniversary dates of the lease.

In her statement of reasons, appellant contends that delivery of the issued lease was never made. Appellant has attached a sworn affidavit asserting that she never received a copy of the issued lease nor any notice from BLM to the effect that the lease had been issued. She states that her address of record has remained the same since the offer was filed to the present time.

Appellant further states that she never received any bill for the rental payment. Although appellant recognizes that the burden of rental payment is on the lessee, she states that "a further check revealed that

no bill was ever sent because the rent was never set up in the Documents Section of the Eastern States Office." BLM has filed no answer in this appeal, leaving appellant's allegations unrebutted. 1/

[1] When BLM issues a noncompetitive lease upon an over-the-counter offer, BLM has been required by regulations in effect at all times pertinent to the adjudication of appellant's offer to mail a copy of the executed lease to the offeror. See 43 CFR 3111.1-1(e) (1987); 43 CFR 3111.1-1(c) (1982), (1979). Although 43 CFR 1810.2(a) provides that this mailing requirement is satisfied when the communication is deposited in the mail, subsection (b) makes it clear that a "person will be deemed to have received the communication if it was delivered to his last address of record." (Emphasis added.) BLM does not claim that the executed lease was deposited in the mail or delivered. 2/ Clearly, we cannot hold that an oil and gas lease has terminated if the issuance was not made in a manner which informed the lessee of the fact of issuance. Thus, a decision that an oil and gas lease is terminated by operation of law for failure to pay timely the annual rental on the first anniversary date will be reversed if BLM fails to show it mailed a copy of the lease to the offeror after it was issued, and it

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1/ A receipt and accounting advice was prepared after receipt of the first year's rental which accompanied appellant's offer when it was filed in 1979. Although the issuance date and bill cycle are noted on this document, the document by itself does not controvert appellant's allegation.

2/ This Board has often observed that a legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. See, e.g., David A. Gitlitz, 95 IBLA 221 (1987), and cases cited therein. This presumption, however, is rebuttable. E.g., Richard A. Willers, 101 IBLA 106 (1988); Bruce L. Baker, 55 IBLA 55 (1981). Most cases in which this presumption is applied involve an appellant's claim that he mailed a document to BLM and that BLM lost it. E.g., Elizabeth D. Anne, 66 IBLA 126 (1982). If BLM has no record of receiving the document, "the presumption of regularity weighs against a finding that BLM received the document and subsequently lost it through mishandling." Gitlitz, supra at 224. We have also noted that a document is filed when it is received, not when it is mailed, and that the sender of a document "assumes the risk and must bear the consequences of loss or untimely delivery of the documents by the Postal Service." Id.

The instant appeal presents the opposite situation with BLM in the role of sender and appellant in the role of recipient. In several cases in which this Board has considered whether an appellant has received constructive or actual notice of a document purportedly mailed by BLM, the Board has not relied upon the presumption of regularity but has required more specific evidence that a document was properly sent. See Mobil Exploration and Producing Southeast, Inc., 90 IBLA 173 (1986); Stephen C. Ritchie, 81 IBLA 162 (1984); Victor M. Onet, Jr., 81 IBLA 144 (1984). In this case, as appellant points out, the casefile contains two executed copies of the lease, indicating that, more likely than not, the lease was never sent. See Elizabeth D. Anne, supra.

appears that the lessee had no notice that the lease had been issued. See Husky Oil Company of Delaware, 5 IBLA 7, 79 I.D. 17 (1972), citing Tranco Gas and Oil Corp., A-28363 (Aug. 2, 1960) for the proposition that automatic lease termination should not occur in the absence of notice that rental is due. See also Solicitor's Opinion, 64 I.D. 333, 337 (1957), holding that automatic lease termination was "to apply to an obligation voluntarily assumed by the lessee and of which he had continuing notice in the lease issued and delivered to him."

The appropriate action in this case is to treat appellant's lease as continuing, therefore, subject to the requirement that she pay the rental accrued since lease issuance and now owing. Appellant shall be sent a copy of the lease agreement issued.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for further action consistent with this opinion.

Franklin D. Arness
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member